

Courts Service Protected Disclosures Policy 2023



An tSeirbhís Chúirteanna
Courts Service



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Contents

1.	Policy Introduction	3
2.	Policy Statement	3
3.	Definitions	4
4.	Purpose	6
5.	Key Principles	6
6.	Scope	7
6.1	Disclosures covered by the policy	7
6.2	Individuals protected	7
7.	Other Courts Service Policies	8
8.	Omissions	8
9.	Accountability and Responsibility	9
9.1	Courts Service Board	9
9.2	Chief Executive Officer	9
9.3	The Senior Management Team (SMT)	10
9.4	Head of the Office of the CEO	10
9.5	Protected Disclosures Officer (PDO)	10
9.6	Designated Person	11
9.7	Reporting Person	11
10.	Procedures	12
10.1	Process Flow Chart	13
10.2	Internal Disclosures	13
11.	External Disclosures	15
12.	Withdrawal of a Protected Disclosure	18
13.	Penalisation	18
14.	Review	18
	Appendix A	19
	Appendix B	21
	Appendix C	22

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1. Policy Introduction

The [Protected Disclosures \(Amendment\) Act 2022 \(“the Act”\)](#), was signed into Law on the 21st of July 2022.

This act replaces the Protected Disclosure Act 2014, adding EU Directive 2019/1, Whistleblowing Directive into Irish law.

This document sets out the Courts Service’s policy and procedures on protected disclosures required under the 2022 Act (“the procedures”) on

- how to make a protected disclosure; and
- how to manage such disclosures.

This policy provides an overview of protected disclosures processes only and is not legal advice. Before making a disclosure, individuals may wish to obtain independent advice or guidance.

2. Policy Statement

The Courts Service is strongly committed to maintaining an open, transparent and ethical workplace culture. This includes facilitating a work environment, where workers are encouraged and supported to raise disclosures regarding wrongdoing or potential

wrongdoing in the workplace and any matter that may impact adversely on the ability to carry out our functions.

We are committed to protecting any person who makes a disclosure from penalisation, or other adverse treatment, when making a disclosure in good faith, based on a reasonable belief wrongdoing has occurred, even if the disclosure is found to be misguided or mistaken.

Incidents of adverse treatment toward a person making a disclosure regarding potential wrongdoing in the workplace will be investigated and may be subject to sanction under the Civil Service Disciplinary Code.

As part of our commitment to an ethical and transparent workplace, the Courts Service is a member of the 'Integrity at Work' programme, a Transparency International (TI Ireland) initiative. Workers are directed to TI Ireland's independent and confidential advice service, available via their 'Speak Up' helpline at 1800 844866, Monday to Friday, 10am to 6pm, or by emailing helpline@transparency.ie, or visiting speakup.ie, where callers may be able to access free legal advice from the [Transparency Legal Advice Centre](#).

Support is also available from the [Civil Service Employee Assistance Service](#).

3. Definitions

The Protected Disclosures Act 2014 as amended by the Protected Disclosures (Amendment) Act 2022 protects workers in the public, private and not-for-profit sectors from retaliation if they speak up about wrongdoing in the workplace.

A Protected disclosure is a written or oral disclosure of wrongdoing or potential wrongdoing within the workplace.

A confidential disclosure is one in which the reporting person has revealed their identity in the disclosure and is afforded the protection of confidentiality by the recipient of the statement.

An anonymous disclosure is one in which the reporting person has not revealed their identity in the disclosure and does not wish to be named. The Courts Service allows for this type of disclosure; however, it should be recognised this may restrict the assessment and investigation of the allegations.

Office of the Protected Disclosures Commissioner supports the operation of the Protected Disclosure Legislation. The Commissioner is responsible for directing disclosures to the appropriate body and transmitting all protected disclosures received by the Ministers to the most appropriate authority for assessment and investigation if required.

A worker includes current or former employees, contractors, consultants, trainees, agency staff and interns, volunteers, unpaid trainees, board members, shareholders, members of administrative, management or supervisory bodies and job applicants.

A reporting person (whistle-blower) is a worker, or former worker, who reveals information about activity within an organisation which could be considered wrongdoing.

Penalisation of reporting person refers to potential punishment, including dismissal and any act or omission causing detriment to a reporting person. Penalisation can be caused not only by the reporting person's employer but also the reporting person's co-workers or otherwise in a work-related context.

Persons concerned refers to named persons in the disclosure who may be involved or connected with the alleged wrongdoing.

Facilitators are persons who assist the reporting person in making a disclosure.

Protected Disclosures Officer (PDO) is responsible for receiving and acknowledging disclosures, appointment of designated persons to conduct investigations, administration of the process, maintaining up to date records, and secure storage of case files.

Designated person is responsible for conducting the investigation under the terms of the policy and act.

Prescribed persons are external designated persons whom the reporting person may lodge their disclosure when they are uncertain as to whom to lodge the disclosure. They are appointed by the Minister for Public Expenditure and Reform.

Suitable persons are third parties whom the commissioner considers to be the most appropriate person to follow up on the reporting person's disclosure.

Reasonable belief in this context is where the available information provides reasonable grounds to support the belief that a wrongdoing has occurred, is occurring, or will occur. It does not have to be proven to be true, and no penalisation will occur where no evidence of wrongdoing is uncovered if reasonable grounds are established.

Work-related context refers to current or past work activities where the reporting person acquires information to support the suspicion of wrongdoing.

4. Purpose

The purpose of this policy is to implement the Protected Disclosures (Amendment) Act 2022 and establish the process to facilitate the making of such disclosures.

Continue to promote an ethical and transparent culture, where workers are empowered to report wrongdoing without fear of penalisation or adverse treatment.

5. Key Principles

This policy includes a number of key principles that will continue to be our focus:

- Promoting a culture of openness, transparency and commitment to ethical conduct.
- Establishing an environment where staff are encouraged to report wrongdoing, knowing they are fully protected from penalisation as provided for in the 2022 Protected Disclosures Act.
- Assessing reports of wrongdoing and taking appropriate action where required.
- Concentrating on the allegation of wrongdoing, not the reporting person making the disclosure.
- Protecting the identity of the reporting person and other considered individuals where possible.
- Not penalising the reporting person where a disclosure is made in good faith and with a reasonable belief, even if the reasonable belief is later discovered to be unfounded.

6. Scope

6.1 Disclosures covered by the policy

The policy and procedures apply to disclosures where the reporting person reasonably believes wrongdoing has occurred, is occurring or may occur, and which came to the attention of the reporting person during his or her employment, or in a work-related context. Wrongdoing can include, but is not limited to the following

- Committing a criminal offence.
- Failure to comply with a legal obligation (except one arising under the worker's contract of employment or a contract obligating the worker to do or personally perform any work or services)
- A miscarriage of justice
- The endangering of an individual's health or safety
- Damage to the environment
- Unlawful or improper use of funds or resources of a public body, or of other public money
- That an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
- Concealment or destruction of information tending to indicate any of the wrongdoings above mentioned.
- Breaches of specified EU law and legislation.
- Disclosures regarding the destruction or concealment of information or attempts to destroy or conceal information relating to a breach are protected under this policy.

6.2 Individuals protected

This policy provides protection from being unfairly penalised following a disclosure by workers in the Courts Service, including, but not limited to,

- Current or former employees
- Contractors
- Consultants
- Trainees
- Agency staff and interns

- Volunteers
- Unpaid trainees
- Board members
- Shareholders
- Members of administrative, management or supervisory bodies
- Job applicants

7. Other Courts Service Policies

The policy and procedures should be read in conjunction with any other Courts Service policies (e.g., the Courts Service Fraud Policy, Acceptable Usage Policy, etc.) which may be relevant to the disclosure concerned.

8. Omissions

The policy and procedures do not apply to the following:

- 8.1 Personal complaints or personal grievances which exclusively effect the reporting person. These should be addressed under policies such as Dignity at Work Policy or the Grievance Circular . Where a disclosure is found to be of an interpersonal nature, it should be referred to the reporting person, with details of the relevant policies through which their complaint can be addressed.
- 8.2 Disclosures where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true the Courts Service may take disciplinary or other appropriate action.
- 8.3 Legal advisors who are in receipt of information whilst providing legal advice are excluded from the protections of the act. Workers with a statutory function to investigate wrongdoing, will not be covered by the Act, where the wrongdoing under investigation is not related to an act or omission of their employer, i.e., Garda Síochána are not protected when reporting wrongdoing related to events outside of An Garda Síochána.

9. Accountability and Responsibility

The Department of Public Expenditure, National Development Plan Delivery and Reform's Interim Guidance for Public Bodies and Prescribed Persons confers levels of governance and responsibility as outlined below



9.1 Courts Service Board

Oversight of Procedures will rest with the Board of the Courts Service to

- Ensure the policy is established and compliant with legislation
- Ensure the process implemented is in accordance with policy
- Established processes are adequate to meet requirements

9.2 Chief Executive Officer

Overall responsibility for the protected disclosures procedures and policy rest with the Chief Executive Officer to

- Ensure values of ethics, transparency and accountability are to the forefront.
- Create an internal reporting system and procedure to receive and manage disclosures which ensures the confidentiality of the identity of the reporting person.
- Identify and fill prescribed roles to ensure the policy and procedure can function successfully.
- Delegate duties to prescribed roles.
- Update the Board regarding policy and procedure and reporting of data.

9.3 The Senior Management Team (SMT)

SMT will be responsible for awareness of policy and promotion of culture of ethics and transparency throughout their directorates and teams. This will involve:

- Reviewing regular reports on statistics regarding protected disclosure claims.
- Ensuring office managers and staff in their directorates are aware of their responsibilities regarding protected disclosures and this policy.

9.4 Head of the Office of the CEO

Promote the protected disclosures process in a manner that creates a culture whereby workers feel safe to report alleged wrongdoing. This includes the following:

- Periodic reports to the SMT.
- Promote this policy through the SMT and PO network.
- Champion the protected disclosures process.
- Oversee campaigns to increase awareness.
- Appoint a Protected Disclosures Officer, to manage the operation and processing of the Protected Disclosure procedures and provide support and guidance to the Designated Persons.
- Authorise relevant and appropriate action following receipt of final investigation report where wrongdoing has been proven.

9.5 Protected Disclosures Officer (PDO)

Day-to-day responsibility for management of the policy and procedures:

- Manage the process and policy on a day-to-day basis
- Review and improve approach where required
- Acknowledge protected disclosures in writing or as appropriate within 7 days of receipt
- Receive, review and administer disclosures
- Appointing trained Designated Persons to conduct initial investigations on receipt of disclosures
- Ensure investigations are conducted in compliance with the policy and process

- Providing workers with clear and easily accessible information on the procedures for making a report either internally or to a prescribed external party
- Providing feedback within 3 months of receipt of the original disclosure, and to provide regular feedback every 3 months thereafter, until such time as the case is resolved
- Manage the case record system, recording all cases received, their progress and outcomes
- Providing reports to the Head of the Office of the CEO.
- Management of secure storage of all electronic and physical case records.

9.6 Designated Person

- Impartial person (or persons) designated to investigate reports received who undertake(s) the following:
 - Conducts a thorough investigation to establish evidence of wrongdoing
 - Investigates disclosures in a fair and impartial manner
 - Maintains the confidentiality of the person making the disclosure unless it is necessary for the effective investigation of the relevant wrongdoing
 - Informs the reporting person where the confidentiality of the person making the disclosure may be required to be disclosed
 - Maintains contact with the reporting person throughout the investigation
 - Provides a written report to the Protected Disclosures Officer where a relevant wrongdoing has not been proven, advising of the outcome and the reasons for it
 - Provides a written report to the Protected Disclosures Officer where wrongdoing has been proven, advising of the outcome and reasons for it, recommending the appropriate action needed to address the relevant wrongdoing, having regard to the nature and seriousness of the wrongdoing concerned.

9.7 Reporting Person

The reporting person is responsible for the following:

- To submit a protected disclosure where they have a reasonable belief wrongdoing has occurred, is occurring or is likely to occur.
- To provide as much available factual information and evidence in the initial disclosure to allow for a comprehensive and thorough assessment and investigation to be conducted.

- To carry out their job as normal following the submission of the disclosure.

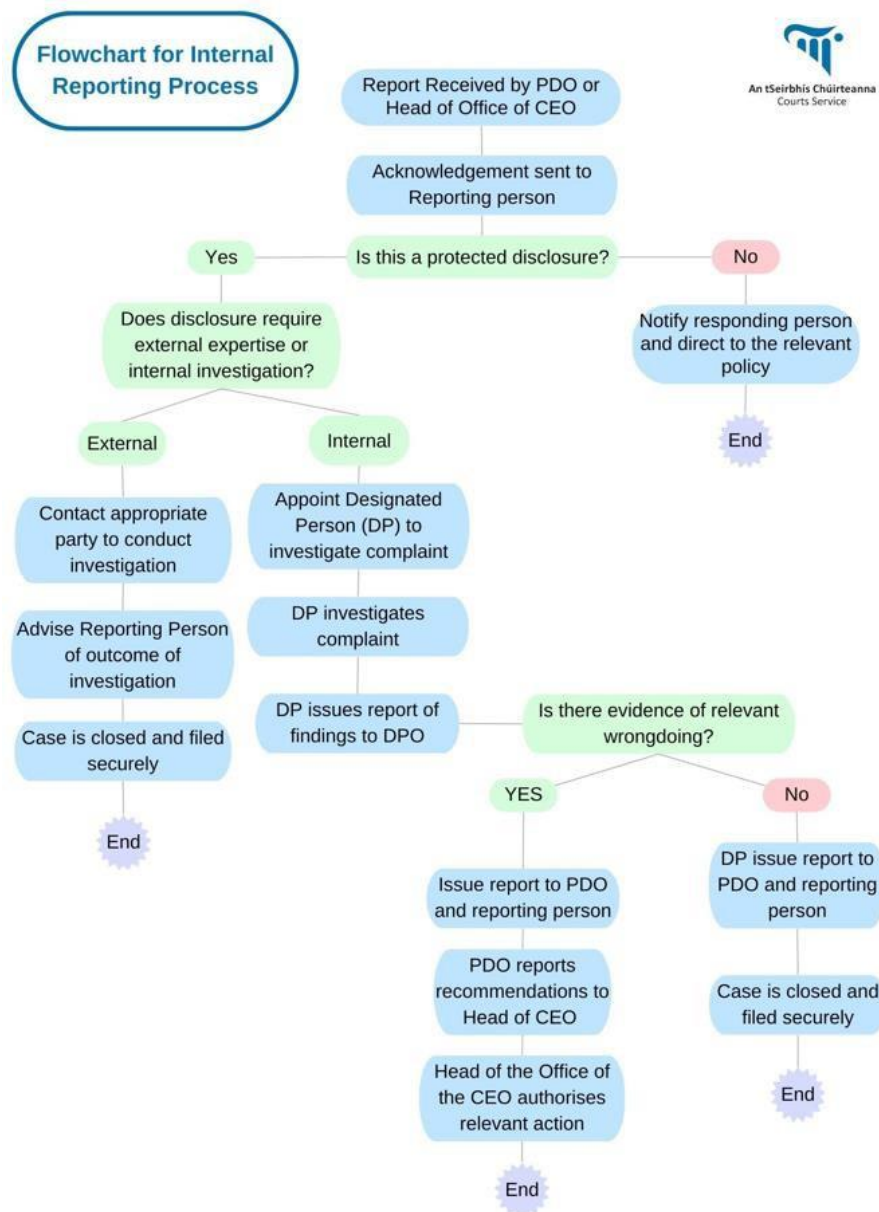
Reporting persons are not required and should not conduct investigations to establish evidence of their suspicion of wrongdoing. Their responsibility is to provide the information which they obtained during their normal working context.

10. Procedures

This policy and procedures are not intended to act as a substitute for normal day to day operational reporting. It is expected concerns in relation to day-to-day operational matters will be brought to the attention of the relevant line manager and dealt with accordingly.

This policy does not require the Courts Service to follow up on anonymous reports, although it may choose to do so. Should the identity of an individual who has made an anonymous report subsequently have their identity revealed and suffer penalisation, they will be covered under the full protections of the Amendment Act.

10.1 Process Flow Chart



10.2 Internal Disclosures

Any worker (as defined above) who has a reasonable belief that one or more of the wrongdoings set out at paragraph 4 above is occurring or may occur, should disclose the relevant information as follows:

- Send an email to Protecteddisclosures@Courts.ie; or
- Write to the Protected Disclosures Officer, Human Resources, Courts Service, Phoenix House, 15/24 Phoenix House, Dublin 7.

- Telephone the Protected Disclosures Officer (PDO) on 01 888 6038 and make the disclosure on the call or arrange a face-to-face meeting.
 1. Where a disclosure is made in person or over the phone, a written statement will be taken by the PDO. The reporting person will be given an opportunity to review and once approved by them, this will become the reporting person's disclosure.
 2. Where the individual making the disclosure feels it is not appropriate to make the disclosure to the Protected Disclosures Officer, they may make the disclosure to the Head of the Office of the CEO.
 3. The reporting person should specify the nature of the potential wrongdoing at the time the disclosure is made. Having made a disclosure, the reporting person should not carry out further investigation in order to establish proof of wrongdoing.
 4. While a disclosure may be made anonymously, please note it may restrict the extent to which this policy can be applied and implemented.
 5. The Protected Disclosures Officer will contact the reporting person within 7 days of receiving the disclosure to acknowledge its receipt.
 6. The Protected Disclosures Officer will conduct an initial review of the disclosure to establish if the alleged wrongdoing falls under the disclosures policy or if it should be managed through a different policy, such as grievance policy.
 7. The Protected Disclosures Officer will contact the reporting person and advise if the disclosure falls under this policy. Where it does not, the PDO will contact the reporting person and direct them to the appropriate policy.
 8. Where the disclosure falls under this protected disclosure policy and is deemed to be of a very serious nature, the Protected Disclosures Officer will assess if external expertise is required. If so the PDO will contact the appropriate authority.
 9. If disclosure does not require external experts, the PDO will appoint a trained Designated Person to conduct the initial investigation.

10. The Designated Person will investigate the disclosure to determine if evidence of the wrongdoing exists.
11. Where satisfied no evidence exists of wrongdoing the Designated Person will complete a report and issue it to the Protected Disclosures Officer and the worker (where appropriate) making the disclosure. The report should outline reasons for their decision not to proceed.
12. If the Designated Person concludes there is evidence wrongdoing may have occurred, they will complete a report and issue it to the Protected Disclosures Officer and the worker (where appropriate) making the disclosure. The report should identify the wrongdoing which has occurred with a recommendation of appropriate action to be taken, having regard to the nature and seriousness of the matter concerned.
13. The Protected Disclosures Officer will present the report and recommendation to the Head of the Office of the CEO.
14. The Head of the Office of the CEO will authorise the relevant action.

11. External Disclosures

Workers are encouraged to make disclosures internally. However, where circumstances exist where this is not possible, they may make a protected disclosure to persons other than their employer as set out at (a) to (f) below.

(a) Other responsible person

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person, IE a contractor may report to the contracting body as opposed to their direct employer.

(b) A "prescribed person"

Certain persons are prescribed by [Statutory Instrument 339 of 2014](#) to receive protected disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies.

A worker may make a protected disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of the role of the prescribed person and relevant circumstances as detailed under [SI 339 of 2014](#). However, in this case the worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

(c) A Minister of the Government

If a worker is or was employed in a public body, the worker may make a protected disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment. In the case of the Courts Service the Minister for Justice and Equality exercises primary statutory functions (under the Courts Service Act 1998) in relation to that body. One or more of the following conditions should be met before such a disclosure is made:

- I. The worker has already made a similar disclosure to their employer or a prescribed person and has not received feedback or where the worker feels the response indicates the complaint is not being investigated thoroughly.
- II. The worker reasonably believes the head of the public body concerned is engaged in the relevant wrongdoing reported
- III. The worker reasonably believes the disclosure contains information which may constitute an immediate, serious danger to the public interest.

(d) A legal adviser

A protected disclosure may be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

(e) Disclosure to the Protected Disclosures Commissioner

The Commissioner can receive reports of wrongdoing:

- directly from a worker
- from a Minister, who is obliged to send it to the Commissioner within ten days of receipt or
- from a 'prescribed person' in certain circumstances.

To make a protected disclosure to the Commissioner you must also reasonably believe that the information you disclose and any allegation you make is substantially true.

(f) Alternative external disclosures (in very limited circumstances)

Section 10 of the Act provides that a protected disclosure may be made to recipients other than those mentioned above if the worker reasonably believes that

- the information disclosed, and any allegation contained in it, are substantially true,
- the disclosure is not made for personal gain,
- any one or more of the detailed conditions set out in section 10(2) of the Act are met and
- in all the circumstances of the case, it is reasonable for the worker to make the disclosure.

In determining whether it is reasonable for the worker to have made the disclosure, regard is to be had to the factors set out in Section 10(3) of the Act.

For general information, contact info@opdc.ie

External reporting channels and procedures can be found in [Section 11 of the 2022 Act](#).

12. Withdrawal of a Protected Disclosure

Workers are reminded, once a protected disclosure has been made in accordance it is not possible to withdraw the disclosure. Reporting persons are required to co- operate with the relevant persons during the investigation of the complaint.

13. Penalisation

- 13.1 The Courts Service affirms no person who makes a disclosure based on a reasonable belief in the occurrence of a wrongdoing in the Courts Service will be penalised for the making of that disclosure, even if no investigation subsequently takes place, or where an investigation does take place and the investigation finds that no wrongdoing occurred. This undertaking extends to any other person who is required to provide information in relation to matters raised as a consequence of the disclosure.
- 13.2 If a staff member believes that he/she/they has been penalised for the making of a disclosure of wrongdoing in accordance with this policy they should contact protecteddisclosures@courts.ie, or their Principal Officer, Head of Directorate, the Head of Internal Audit or the Chief Executive Officer, as appropriate.
- 13.3 Penalisation of a worker for having made a protected disclosure will not be tolerated, and any attempts will be investigated under the Civil Service Disciplinary Code.

14. Review

- 14.1 Responsibility for the review of the operation of this policy lies with the Chief Executive Officer of the Courts Service.
- 14.2 The Head of Internal Audit should report to the Chief Executive Officer and the Audit Committee of the Courts Service Board, on an annual basis on the operation of the policy, or more frequently if he or she considers it appropriate.

Appendix A

Procedure to be followed by Protected Disclosures Officer on receipt of disclosure

All reported disclosures about perceived wrongdoing in the workplace must be treated seriously. Obligations include

1. Ensure that (s)he is thoroughly familiar with the Courts Service's policy and procedures on the making of disclosures (see above).
2. Record the disclosure and the steps taken to deal with it.
3. Assess whether the disclosure should be treated as a protected disclosure and, where satisfied that it is not a protected disclosure, encourage the discloser to utilise other processes (e.g., a grievance procedure, where appropriate) so that the disclosure can be dealt with in an appropriate manner. If it is unclear whether the disclosure qualifies as a protected disclosure, the recipient should treat the disclosure as a protected disclosure (and protect the identity of the discloser in accordance with the Procedures) until satisfied that the information is not a protected disclosure.
4. Acknowledge receipt of the disclosure with seven days of receipt.
5. Where necessary, seek clarification from the worker on any aspect of the disclosure which is unclear.
6. Appoint a Designated Person to conduct an investigation
7. Ensure the Designated Person has received training and is familiar with the policy and procedures and the investigation complies with policy and procedure.
8. Provide feedback within 3 months of receipt of the original disclosure, and to provide regular feedback every three months thereafter, until such time as the case is resolved.
9. Provide a report of the outcome of the case to the reporting person.
10. Where the disclosure indicates that a criminal or other external investigation is warranted, ensure that the matter is reported to An Garda Síochána or, as the case may be, such other body as may have the statutory power and function of investigation of the matter.

11. Take immediate action if the alleged wrongdoing involves a serious loss or danger to others.
12. Take appropriate action if the disclosure is proven to be grounded, or, where appropriate, refer the matter to the appropriate official within the Courts Service for action.
13. If the disclosure is considered deliberately false, consult the Personnel Officer as to the appropriate steps to be taken.
14. Report the outcome (see form specified in Appendix C) and forward all records to the Principal Officer in charge of the Office of the Chief Executive Officer.

Appendix B

Procedure to be followed by Designated Person

1. Investigate whether the disclosure report is based on a reasonable belief but ungrounded, based on a reasonable belief and grounded or a deliberately false report.
2. Establish what evidence is available to support the concern.
3. Obtain evidence from any relevant witnesses.
4. Carry out relevant enquiries promptly, sensitively and discretely, taking all reasonable steps to protect the identity of the maker of the disclosure.
5. Secure any necessary authorisations to the making of inquiries which may be required (e.g., under the Acceptable Usage Policy)
6. Where it may be necessary to reveal the worker's identity to undertake an effective inquiry, consult with the worker beforehand and seek consent.
7. Consider all evidence before making a recommendation.
8. Provide the Protected Disclosures Officer with a report following the conclusion of the investigation, outlining the decision, the reasons for it, and any recommendations.

Appendix C

Report of Information Disclosed

To: The Principal Officer in charge of the Office of the Chief Executive Officer
I received and dealt with a disclosure of information, as detailed below:

Name of recipient:

Name of discloser (if available):

Details of the disclosure (attach relevant correspondence):

Date of receipt of disclosure:

Summary of steps taken on foot of disclosure (attach correspondence and documentation):

Decision and reasons transmitted to the discloser (attach relevant correspondence):

I confirm I have dealt with this disclosure in accordance with the Courts Service's policy and procedures on the making of disclosures and any other Courts Service policy relevant to this disclosure.

Signed:

Date: